192

Department of Excise

OFFICE of the Commr. of Excise

STATION Madras

R No. 1515 akari Note seen by C

Dated 21 - 7 - 27

To whom sent	Given for copying M. 11/8/27 Date Initial.
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(SUBJECT.)

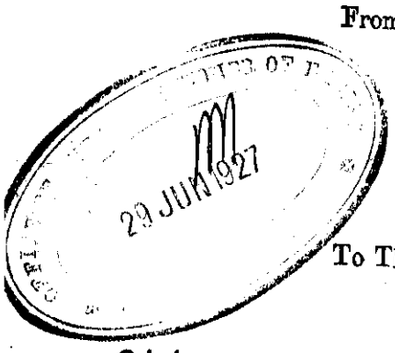
Crime - akari CR 347/21-27 - Mangalore circle - inadequate punishment - brought to District Magte's notice.

C.F. 82

In reply, please quote number, date and short title.*

EXCISE DEPARTMENT.

Received ..... *Registered* .....



5944

From (Name) C.B.Beadnell Esquire,

(Designation) Assistant Commissioner of Excise,

Post Box ....., (Station) West Coast Division, Cannanore.

Telegraphic Address .....

To The Commissioner of Excise,

MADRAS.

R.C.R. *No.* 456/27, *dated* 24--6--'27./192/

Sir,

ENCLOSURES .....

SPARE COPIES .....

*Reference:--Abkari C.R.No.347 of 26-27 of Mangalore Circle.

The 3 accused in abkari C.R.No.347 of 26-27 of Mangalore Circle were charged by the Inspector before the 2nd class Magistrate, Mangalore for illicit distillation of Palmyrah arrack in the open on 11-2-27 at 1 A.M. - an offence punishable under sections 55(a) & (g) and 58 of act I of 86 - and were all convicted. The 1st and 2nd accused were sentenced to pay a fine of Rs.75/- each and the 3rd accused do - to Rs.40/- for the offence under section 55(a) and 58 while for the offence under section 55(g) the 1st and the 2nd accused were fined Rs.60/- and the 3rd accused to Rs.30/- and in default of payment of fine each of the accused was sentenced to undergo six weeks R.I. on each of the counts. An appeal was preferred by the 2nd accused before the 1st class Magistrate Mangalore against his conviction and the sentence passed against him by the 2nd class Magistrate, Mangalore and the 1st Class Magistrate although acquiesced in the lower court's conviction of the appellant of the offence of actual distillatio (vide the last sentence of para 3) - has set aside the conviction of the appellant under section 55(g) and confirmed the conviction and sentence under sections 55(a) and 58 on the ground that a person cannot be punished for distilling spirits and also for possession of spirits obtained by such distillation and quotes Rajanlal's "The law of crime" in support of his action while at the same time he states that under section 71 I.P.C. the accused should have been punished only for one of such offences. But in revising the judgment

p2 (O) p3 (O) p3 (U) do - p3 (W) p4 (W) - do - of the repeals but I but no

f the lower Court the 1st class Magistrate has quashed the conviction of the appellant under section 55(g) which he rightly should have upheld in view of the arguments advanced by him and in justice should not have interfered with the punishment inflicted on the appellant. I consider that the I Class Magistrate in reversing the conviction of the appellant in respect of section 55(g) has erred and I request you will be good enough to draw the attention of the District Magistrate to the appeal judgment.

Appl-16 and (W) 3-4 CF

2. The case file in abkari C.R.No.347 of 26-27 together with copies of judgments of both the appellate and the lower courts and a copy of the Inspector's report in the matter are herewith submitted.

For Assistant Commissioner.

T N/27-6-1927.

2716.

Copy of Mangalore Inspector's R.O.C.No.347/26-27 Abkar dated 12th June 1927.

Reference:--Your R C R No.456/27 dated 23-5-1927.

On 11-2-27 at 1 A.M. on information, I s 3 accused in the act of distillation of Palmyrah toddy arrack on the banks of a small canal in Neermarga village of Mangalore Taluk and charge sheeted all of them before the Second class Magistrate, Mangalore under sections 55(a) (g) and 58 of Act I of 1886. The Magistrate found them all guilty of the offence with ✗ which they were charged and sentenced the 1st accused and 2nd accused/t pay a fine of Rs.75/- each for offences under sections 55(a) and 58 and III accused to pay a fine of Rs.40/- and for the offence under section 55(g), the Magistrate sentenced the I and the II accused to pay a fine of Rs.60/- each and the third accused to pay a fine of Rs.30/-. He also ordered that in default of payment each of the accused will undergo six weeks R.I. on each of the 2 counts.

P 2 (0)

P 3 (0)

The II accused preferred an appeal before the Sub-Divisional I Class Magistrate, Mangalore against the conviction of the Lower Court. The I Class Magistrate reversed the Lower Court's sentence fining appellant Rs.60/- under section 55(g) and confirmed the sentence fining Rs.75/- under section 55(a) and 58 of Act I of 1886 on the ground that a person cannot be punished both for distilling spirit and for possession of such spirit obtained by distillation. In support of this argument, he quotes section 71 of I.P.C.which runs thus "where anything which is an offence is made up of parts any of which parts is itself an offence shall not be punished with the punishment of more than one of such offences unless it be so expressly provided."

Where anything is an offence falling within 2 or more separate definitions of any law in force for the time being by which offences are defined or punished or where several acts of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence.

The offender shall not be punished with a more severe

"evere punishment than the court which tries him could award for any of such offences.

Under penalty section 55 of the Madras abkari act, it has been expressly provided, that the offender shall on a conviction before a Magistrate be punished for each such offence with fine which may exceed to Rs.1000/- or with imprisonment for a term which may extend to 6 months or with both. So the Lower Court has rightly convicted the appellant under two different sections. Apart from this, even granting that the argument advanced by the I Class Magistrate is correct the Lower Court has not sentenced the appellant with the punishment of more than one of such offences.

I therefore consider that the first class Magistrate who reversed the conviction of the appellant in respect of section 55(g) has erred and request you will be pleased to place the matter before the Advocate General for an expression of his opinion in the matter. The case file and the copies of judgments of both the Lower Court and Upper Court, are herewith submitted.

Sd/-K.R.Chidambara Iyer
13-6-1927
Inspector.

(True copy)

For Assistant Commissioner

N/27-6-1927.

(46)

C.F. 16—5,84,359—17-12-21. (6)

OFFICE NOTE.

SUBJECT Crime — CR 347/26 M - Mangalore Circle - reduction of sentence on appeal - Report

From

A.S. West Coast Dn

Register No. 59669/25

Please see the letter from the A.S. West Coast. The three accused in the case were caught in the act of illicit distillation, and both, hot arrack, distilling implements etc were seized. The accused was not however charged under section 55(e) i.e for manufacture, but was charged only for possession of hot arrack (55(a) & 58) and of distilling implements & materials (55(g)). The Lower Court sentenced A1 & A2 each to pay a fine of Rs 75 for the offence under section 55(a) & 58 and Rs 60 for the offence under section 55(g). A3 was sentenced to pay a fine of Rs 40 & Rs 30 respectively. On appeal by A2 the Appellate Court ~~held~~ referring to Ratanlal's

Law of crime and Section 71 IPC held that a man cannot be punished for distilling spirit and for possessing spirits obtained by such distillation. The Law of crime is not available in this office. Section 71 IPC does not apply to the present case since the accused was charged for two offences under the Act. Further the Act itself provides for separate punishments for each offence. Technically therefore the Lower Court was correct in inflicting separate punishments for the two offences. In effect however distillation and possession of distilled spirits consists in the present case constitute only one offence. Reference is in this connection also solicited to the Bombay Judgments marked in pencil on p 144 & 140 of the book put up. ~~No action is therefore necessary~~ No further action appears therefore necessary but if considered advisable the point that the Act provides for separate punishments for each of the offences under Section 55 & 56 may be brought to the notice of the Hon'ble Judges for giving suitable instructions to the Sub Class Magistrates Concerned. For orders.

Please see note below
11/7/57

The sentence of a mere fine was quite inadequate considering his way

way in which revenue was defraude
viz distillation on a large scale
during nights. The Magte should have
~~one lakh thousand~~ awarded a more
substantial punishment. This may also
brought to the notice of the Dt Magte
such action as he may deem fit

) It is not known whether the prosecution did not make out a case for a more deterrent punishment in the lower Courts.

7.7.49

It is a very important Case in which the 3 accused were Caught in the very act of distillation & arrested after great trouble at a very late hour in the night (1 Hrs). A large qty. of ID and a complete still with 20 pots of wash were seized. A deterrent sentence was called for This ~~D.M. may~~ be address may be brought to the notice of the DM Gs suggests Mangalore ① being a notorious one for ID

Regy
7.7.49

The misdemeanour of the sentence may be brought to the notice of the District Magte as suggested in the note

Please see pages 144 + 146 of the Book put up. The appellate Court is right in holding that the 2nd accused cannot be convicted

way in which revenue was defraude
viz distillation on a large scale
during nights The Magte should have
~~done bodily thank~~ awarded a more
substantial punishment. This may also
be brought to the notice of the Dt Magte
for such action as he may deem fit

GD It is not known whether the prosecution did not
7.7.77 make out a case for a more deterrent
punishment in the lower Courts.

It is a very important
case in which the 3 accused were
caught in the very act of distillation
& arrested after great trouble at a very
late hour in the night (1 A.m.). A
large qty. of I.D. and a complete & still with
20 pots of wash were seized. A
deterrent sentence was called for
This ~~D.M. may be~~ address may be
brought to the notice of the D.M
as suggested, Mangalore ① being a
restricted area for I.D

Regd
7.7.77

The misdemeanor of the
be brought to the notice of the District Magte
as suggested in the note

Please see pages 144 + 146 of the Book
put up. The appellate Court is right in
holding that the 2° accused cannot be
~~punished~~

is punished ~~for two~~ separately for what is really one offence viz illicit distillation, but it is difficult to understand how the appellate court ~~can~~ to quashed the conviction against the 2nd accused (appellant) of the offence under Sect 55(g) — uses keeps or has in his possession any materials, still else in other words distills any liquor

The appellate court agreed with the Lower Court in accepting the prosecution ~~w~~ that appellant was arrested with accused 1 & 3 when distilling arrack & that appellants conviction was correct. In spite of this finding this appellate court deliberately reverses the Lower Courts sentence finding appellant Rs 60/- under Sect 55(g) while it confirmed the sentence under Sect 55(a) possession of liquor & 58 possession of illicit liquor. Having agreed that accused was rightly convicted of actual distillation it ought to have upheld the sentence under 55(g). (W) page 3 (W) page

Thus, I think, ought to be brought to the Court notice

MS
11/7/07

In Appeal
13.7

G.E. 16—12,86,979—21-9-

DRAFT FOR APPROVAL

Enclosures

Despatch No

When given to fair copying

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C Register No. 5964/25 Dated

From The RL West Coast
Letter RLR 6561/25 of 24.6.25

Subject.

Crime - alleged CR 361/25-26
Mangalore D - inadequate fines
- brought to the notice of the Magistrate when.

To

THE

Sir,

I am to invite your attention to the judgment in CC 191/25 on the file of the II Class Magt Mangalore. The three accused involved in the Case were charged for offences under Section 55(a) & 58 of the Act and Section 55(g) of the Act. For the offences under Section 55(a) & 58, the first two accused were sentenced to pay a fine of Rs 75 each and the third accused to pay a fine of Rs 40. For the offences under Section 55(g) a fine of Rs 60 was inflicted on each of the first two accused and Rs 30 on the third accused. The three accused

le the accused were caught after great trouble
a very act of distillation on a large scale and
of the accused was a leading
r and the offence committed
ime becomes all the more
ous in view of his specific
cation under Condition 3 of his
ce Conditions to safeguard
interests. As Further A2
a landholder. In the circumstances
punishment inflicted on them
the Magh is very inadequate
s Cannot be expected to have any
errent effect on them. Dis
ime is largely prevalent in
e localities and if the Magistracy
l not cooperate by inflicting
rrent punishments, the task of
Police staff in suppressing crime
ll be one of great difficulty.
am to request you therefore
issue necessary instructions
the subordinate Magts to with a
ew to award deterrent punishments
flicted on in serious Cases of this ka
I am to point out also
at on appeal by A2, the Addl
Sessions Magh Mangalore in CA 9/17
reversed the sentence of the lower

Court in regard to the offence under section 55(g) of the Act. This Court agrees with the lower court in accepting the prosecution evidence that A2 was arrested with A1 & A3 when distilling arrack and held that the conviction by the lower Court was correct. Having agreed that A2 was rightly convicted of actual distillation the appellate Court ought to have upheld ~~upheld~~ the conviction under section 55(g) ~~and had no justification for reversing it~~. in confirming the fine of Rs 75/- inflicted by the lower Court.

20.7.17

To
The Dt Magt Mangalore
Copy to the Asst Court.
(with records)

20/7

20.7.17

20/7